

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

Case No. 17-cr-364

5 -vs-

6 TEVON ADAMS,

7 Defendant.

8 -----x  
9 United States Courthouse  
10 White Plains, New York  
11 March 14, 2019  
12 10:08 a.m.

13 Before:

HONORABLE CATHY SEIBEL

District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN  
16 United States Attorney for the  
17 Southern District of New York  
18 KATHRYN MARTIN  
19 Assistant United States Attorney

20 THE HENRY LAW FIRM PLLC  
21 BRADLEY HENRY  
22 Attorney for the Defendant  
23  
24  
25

1 THE DEPUTY CLERK: The Honorable Cathy Seibel  
2 presiding. United States versus Adams.

3 THE COURT: Good morning, Ms. Martin and Mr. Henry,  
4 and Mr. Adams. Everyone can have a seat.

5 MR. HENRY: Good morning, Judge.

6 MS. MARTIN: Good morning, Your Honor.

7 THE COURT: I am going to start by putting on the  
8 record what I have received in connection with the sentencing.  
9 I have the presentence report, which is dated January 23rd of  
10 this year. I have Mr. Bradley's sentencing memo with  
11 attachments, which is dated February 28th, and I have the  
12 government's letter, which is dated March 7th. Is that  
13 everything I should have?

14 MS. MARTIN: Yes, Your Honor.

15 MR. HENRY: Yes, Your Honor.

16 THE COURT: All right. Mr. Adams, have you read the  
17 presentence report?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you gone over it with your lawyer?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Henry, you have read the presentence  
22 report and gone over it with your client?

23 MR. HENRY: I have, Your Honor.

24 THE COURT: Do you have objections to the factual  
25 material in the presentence report?

1 MR. HENRY: No, Your Honor.

2 THE COURT: Does the government have objections to the  
3 factual material in the presentence report?

4 MS. MARTIN: No, Your Honor.

5 THE COURT: All right. Then the findings of fact in  
6 the presentence report are my findings of fact.

7 We have one guidelines issue I guess that we should  
8 discuss before I hear from the parties on what the sentence  
9 should be. There is a difference between the plea agreement and  
10 the presentence report in that probation did not hit Mr. Adams  
11 with two points for committing the instant offense while serving  
12 a criminal justice sentence under 4A1.1(d) of the sentencing  
13 guidelines.

14 The application notes to that guideline, specifically  
15 note four, define a criminal justice sentence as, "a sentence  
16 countable under 4A1.2 (definitions and instructions for  
17 computing criminal history) having a custodial or supervisory  
18 component."

19 The parties seem to think that the defendant's prior  
20 conviction was a criminal justice sentence, even though it  
21 wasn't counted under 4A1.2, and the government's explanation is  
22 that while it may not count under 4A1.2(a)(1), we should really  
23 be looking at 4A1.2(c), which describes sentences counted and  
24 excluded, and under there it's countable. It seems a little bit  
25 of a stretch, Ms. Martin. The -- I will give you an opportunity

1 to explain to me why I should disregard 4A.2(a)(1), which says  
2 it doesn't count and look only at 4A1.2(c).

3 MS. MARTIN: Your Honor, I suppose really just because  
4 4A1.2(c) is titled Sentences Counted and Excluded whereas 4A1.2  
5 is just entitled Prior Sentence. I agree it's not the strongest  
6 of arguments and is not necessarily --

7 THE COURT: I expect better from you, Ms. Martin.

8 MS. MARTIN: I -- Your Honor, I did not --

9 THE COURT: The record should reflect I was just  
10 making fun of Ms. Martin.

11 MS. MARTIN: Yes, I spoke to Ms. Comey about this,  
12 actually, because she anticipated that this would be an issue at  
13 the sentencing.

14 THE COURT: She mentioned it in her letter.

15 MS. MARTIN: Yes. So we discussed it, and it's my  
16 understanding that it is practice to include it for the reason I  
17 just stated that in 4A1.2(c) that title, that subsection is  
18 specifically entitled Sentences Counted and Excluded, and as you  
19 noted in the application note, it specifically cites having  
20 means of sentence countable under 4A1.2. So countable you would  
21 look to 4A1.2(c) as opposed to 4A1.2(a).

22 I also just think it's worth noting that even if Your  
23 Honor finds that it doesn't fit within that application, it's  
24 certainly something you could take into account under 3553(a).

25 THE COURT: I am certainly going to take it into

1 account, but I am really not buying the government's argument,  
2 and I don't know if it's Ms. Comey or Ms. Kelly or Ms. Nichols  
3 who wrote the letter. They gave it the college try, but I don't  
4 read it the way the government does. 4A1.2(c) essentially says  
5 certain minor offenses aren't counted. 4A1.2(a)(1) describes  
6 certain other offenses that aren't counted, specifically those  
7 that are part of the instant offense.

8           4A1.1 note four, in defining a criminal justice  
9 sentence refers to 4A1.2 in total, even by its name. It doesn't  
10 say a criminal justice sentence means a sentence -- a sentence  
11 countable under 4A1.2(c). It refers to the whole note -- to the  
12 whole guideline, and I am going to apply the whole guideline.  
13 So I think probation is correct. I can also tell you it's  
14 probably not the difference between what the parties stipulated  
15 to, which was 51 to 73 months, and what probation finds, which  
16 is 46 to 57 months. It's probably not going to -- not going to  
17 make a difference here, but I do think that probation is  
18 correct.

19           Okay. Does the government wish to be heard?

20           MS. MARTIN: Your Honor, just briefly, I think as set  
21 forth in the government's sentencing submission, there are  
22 obviously some aggravating factors here and certainly some  
23 mitigating factors.

24           I think the aggravating factors are, in comparison to  
25 some of Mr. Adams' co-defendants, it seems that he was motivated

1 by greed as opposed to a heroin addiction; and that he could  
2 have had legitimate employment, and instead chose to support his  
3 life-style by selling heroin. That being said, as noted in  
4 probation's -- as in the probation report, and in the  
5 government's submission, since his arrest in this case,  
6 Mr. Adams has made very good progress. He's stayed clean. I  
7 guess he previously did have a drug problem, but has been clean  
8 since 2015 or 2016; and that he also has held two jobs and seems  
9 capable of maintaining legitimate employment; has the support of  
10 his family; has been complying with the terms of his pretrial  
11 supervision.

12 I should have noted, too, on the aggravating side that  
13 he committed this while on probation. So even if Your Honor  
14 doesn't -- which Your Honor found doesn't assess those two  
15 points, I certainly do think it is a relevant factor to take  
16 into account that he committed the instant conduct while he was  
17 on probation.

18 So I would note that this is kind of an unusual case  
19 I think in terms of the aggravating and the mitigating. I do  
20 think the discount provided for by probation, even their  
21 calculation is 46 to 57 months, so they recommended time served.  
22 That's a huge break. So I think the guidelines, given the  
23 amounts, and even if Your Honor doesn't take into account the  
24 fact that he committed it on probation, if you take it by the  
25 guidelines, but taking into account 3553(a), I think 46 to

1 57 months isn't an unreasonable sentence, or is a reasonable  
2 sentence, and I do think that there are other reasonable  
3 sentences. It's just not quite clear to me that time served is  
4 appropriate here.

5 THE COURT: I know this isn't your case, but the  
6 conduct, as far as I can tell, if the March 2015 conduct was  
7 part of the instant offense, then I gather it lasted at least  
8 from March 2015 through the date of arrest, which was two years  
9 later.

10 Do we know -- can you be any more specific as to the  
11 timeframe of the defendant's involvement?

12 MS. MARTIN: Your Honor, I cannot. I mean, the  
13 conspiracy I would note is 2014 through 2017.

14 THE COURT: I don't know. That's the --

15 MS. MARTIN: The conspiracy.

16 THE COURT: And this defendant was not part of the  
17 Southside Gang, as I understand it.

18 MS. MARTIN: That is correct. He is not part of the  
19 Southside Gang. I think he was associated with it, but he was  
20 certainly not -- we are not representing that he was a member of  
21 that gang.

22 But I apologize. I don't have in any more specific  
23 information other than his conviction, which is in 2015.

24 THE COURT: And another question: I can never  
25 remember, you know, how many bags in a bundle and how many

1 bundles in a brick and how many ounces in -- how many grams in a  
2 bag and all that; but is it fair to say that 400 grams  
3 represents many thousands of bags?

4 MS. MARTIN: I believe that's correct, Your Honor. I  
5 think it's ten grams. It's .8 or something like that in a  
6 glassine bag, I think.

7 THE COURT: .8 of a gram, no. It's way less than  
8 that.

9 MS. MARTIN: Okay. So then it definitely is a  
10 significant amount.

11 THE COURT: I mean a bag -- just one glassine -- you  
12 know what --

13 MS. MARTIN: It's significant. 400 to 700 is a  
14 significant amount of heroin.

15 THE COURT: I don't think a bag has nearly a gram,  
16 but --

17 MS. MARTIN: That's right. It doesn't have a gram,  
18 but it's 400 to 700 grams of heroin is a significant amount of  
19 weight.

20 THE COURT: Yeah, it's, you know, give or take half a  
21 kilo, but in terms of individual bags and how much people used,  
22 I am a little fuzzy on that, but I will remain a little fuzzy on  
23 that and just not consider how many doses. I will just consider  
24 the total weight.

25 Mr. Henry, I will hear whatever you want to say.



1 MR. HENRY: Thank you, Your Honor.

2 I won't belabor the point. I mean, I think Mr. Adams  
3 has done a really spectacular job since his arrest. I think to  
4 answer the Court's question, this is a discussion that I had  
5 with the U.S. Attorney's Office when we were talking about a  
6 resolution in this case, which was about what his conduct was in  
7 relation, and it was -- our discussions about that were that his  
8 conduct was all relevant conduct in terms of what he did prior  
9 to 2015 and what he is charged with in this case.

10 It's my understanding that after that conviction,  
11 there was no more -- there was no more from my client in terms  
12 of selling. So it's all --

13 THE COURT: So this is --

14 MR. HENRY: -- all is interrelated.

15 THE COURT: Well, this isn't -- this is news. Your  
16 position is that after his arrest on March 10, 2015, he no  
17 longer was involved?

18 (Pause)

19 MR. HENRY: So my understanding is that after that  
20 arrest, there was no more selling; that it was --

21 THE COURT: Well, that's a little fishy because your  
22 client was picked up on a wire in 2017 talking to Mr. Fennell.  
23 So --

24 MR. HENRY: I am sorry. Let me --

25 THE COURT: -- get your facts straight.

1 (Pause)

2 MR. HENRY: So I think in terms of the conspiracy,  
3 Your Honor, I don't want to get into it. The fact of the matter  
4 is, my client pled guilty to the offense. He sold heroin. We  
5 are here to address that issue today.

6 I think -- I mean, in terms of the amount of weight  
7 that he sold, it certainly was the majority of it prior to that  
8 date. There are wires and conversations about that. I think it  
9 was significantly reduced.

10 In terms of, you know, his involvement in the case, I  
11 think there was a recognition from our side as well as the U.S.  
12 attorney's side that my client was on the lower end of the  
13 culpability spectrum in this case. He, you know, was involved  
14 as a street-level dealer. We've addressed some of that in the  
15 sentencing memorandum, which I won't rehash.

16 I think in terms of sentencing for him, right, the  
17 government does point out that -- we agree with pretrial's  
18 position that time served is an appropriate sentence with  
19 supervised release, which will keep Mr. Adams under probation's  
20 thumb; keep him doing what he needs to be doing and moving  
21 forward in his life and with his case, maintaining his job,  
22 taking care of his family, who, by the way, are here today,  
23 along with his young son.

24 You know, he's done a really commendable job in  
25 that -- in taking a really negative thing and turned it into

1 what could be perceived as a really positive thing.

2           There are certainly a range of options for the Court  
3 between, you know, the guideline range sentence and time served,  
4 including probation if the Court is wavering on that particular  
5 issue. The point being, a noncustodial sentence in this case is  
6 appropriate for Mr. Adams for all of the reasons that probation  
7 pointed out and for some of the reasons that the government says  
8 makes some sense in this particular case.

9           I think from my perspective and my interactions with  
10 Mr. Adams is that he clearly understands his actions. He  
11 clearly understands what happened in this particular case. He  
12 is ready to move forward with his life. He has gotten it  
13 together. Putting him in jail will derail those efforts of his  
14 pretty significantly, and in some cases that makes sense. In  
15 this case, I don't see that it does.

16           I think if you look at the 3553(a) factors, really the  
17 one that they all weigh in favor of a noncustodial sentence in  
18 this particular instance except for it's a serious offense.  
19 Mr. Adams obviously recognizes this is a serious offense and has  
20 pled guilty in accordance with that; and secondarily, general  
21 deterrence, I think he has been specifically deterred,  
22 significantly deterred in this particular instance.

23           General deterrence being what it is, I think the fact  
24 that he was convicted and has pled guilty and will face severe  
25 restrictions on his liberty for a significant period of time

1 would put others into a position to have to think about what  
2 they are doing.

3 Unless the Court has any particular questions, I think  
4 we have stated our position, and my client, I think, would like  
5 to say a couple of words.

6 THE COURT: Yes. I will give him that opportunity in  
7 a moment. Just give me one second.

8 Is the government able to give me any more specifics  
9 than appears in the sentencing letter regarding what the  
10 defendant did in 2017 that says he was intercepted over a  
11 wiretap on Mr. Fennell's cell phone in 2017. Among other  
12 things, they discuss the conspiracy supplier, the brand of  
13 heroin the conspiracy distributed, and money owed by drug  
14 customers. At one point Adams also agreed to serve Fennell's  
15 customers if Fennell left town for a vacation.

16 The letter doesn't say -- come out and say that the  
17 defendant was still selling drugs at that time, although I think  
18 it's a fair inference, but what exactly is on the recordings of  
19 Mr. Adams?

20 MS. MARTIN: Your Honor, it's my understanding that he  
21 was -- first of all, it is my understanding -- it is the  
22 government's position he absolutely was still involved in the  
23 conspiracy and selling drugs in 2017.

24 The proof would include the wire intercepts. It's my  
25 understanding that the wire sort of largely discussed I think

1 it's mostly inferences, but there are intercepted communications  
2 between Adams and Fennell discussing particularly stamps of  
3 heroin in which Adams asked Fennell for a common supplier  
4 believed to be part of Ruiz's crew had given Fennell a different  
5 stamp; intercepted communications in which Adams agreed to serve  
6 Fennell's customers if Fennell goes on vacation, and intercepted  
7 communications in which Fennell told Adams that Fennell had cut  
8 off a particular customer until that customer pays Adams back  
9 what the customer owed Adams, and in addition to these wire  
10 calls, it's also my understanding that there are cooperators who  
11 would say that he was still selling in 2017.

12 THE COURT: Thank you.

13 Anything you want to say, Mr. Henry, before I hear  
14 from your client?

15 MR. HENRY: No. I don't think so. Thank you.

16 THE COURT: Mr. Adams, if you would pull the  
17 microphone in front of you, I will hear anything you wish to say  
18 now.

19 THE DEFENDANT: Your Honor, I would like to say I am  
20 sorry for everything. Trust me, this is the last time you will  
21 ever see me in this type of courtroom, and I just want to speak  
22 about that -- that wiretap. Even though all I can say is I was  
23 not going forward with selling those drugs for Mr. Fennell.  
24 I -- on that same wiretap they do have that I called him back  
25 and said, no, I changed my mind. I do not want to do that.

1 They might not mention that, but that is on that wiretap two  
2 minutes later.

3           Prior to that, I have had my son, and I changed my  
4 life around completely, and that was part of the reason I did  
5 call back and said, no, I don't want to do it any more. Right  
6 now I have two great jobs. One I am in training to be my  
7 assistant manager of my department, and right now my biggest  
8 thing is taking care of my son and family, keeping them in a  
9 home, and basically teaching my son everything growing up and  
10 how to learn and accept responsibilities and there's  
11 consequences and everything in life. So regardless of what  
12 happens today, I want him to understand he has to accept his  
13 response -- accept everything that happens in life, and so he  
14 doesn't follow in the same footsteps I have.

15           THE COURT: Well, I think we need to have a hearing  
16 because Mr. Adams is taking the position that he didn't sell  
17 after his state arrest, and the government is taking the  
18 position he did.

19           Well, I take it back. Mr. Adams is taking the  
20 position that he didn't sell after his son was born, and  
21 unless -- I am not sure exactly when that was. Let's see, the  
22 child is two, so that would have been --

23           MR. HENRY: January 2017, Your Honor.

24           THE COURT: So it will make a big difference to me if  
25 Mr. Adams stopped selling after his arrest, and from what -- you

1 know, Mr. Henry's been consulting with his client on that  
2 subject as I am sitting here. What Mr. Adams just said  
3 didn't -- wasn't quite, I stopped selling after my arrest; it  
4 was, I stopped selling after my son was born, which was  
5 January 17th, but the government says it has evidence that to  
6 the contrary; and it will make a difference to me, A, if the  
7 government cannot prove that the defendant was selling after his  
8 arrest, that will make a difference; and B, if the government  
9 can prove that Mr. Adams just lied to me, that will make a  
10 difference.

11           So I think I need to know whether, you know, what's on  
12 those recordings and what the government's evidence is before I  
13 can understand what's appropriate. If, in fact, Mr. Adams was a  
14 model citizen after his arrest, or if -- at one end of the  
15 spectrum; or if at the other end of the spectrum he just lied to  
16 me, or even if he did sell after his arrest, but not after his  
17 son was born, in other words, if he gave up the criminal life on  
18 his own before his arrest, that will make a difference to me.

19           So I don't want to assume the worst nor do I want to  
20 assume the best. I would like to know what the facts are. So  
21 let's set a date for a hearing.

22           Let's see, I could do it the week of the 25th. I was  
23 suppose to have a bench trial that went away. I don't know if  
24 that gives the government enough time to prepare, given that I  
25 know it's not your case, Ms. Martin, but --

1 MS. MARTIN: I think maybe later in the week on the --  
2 of the 25th if Your Honor has available.

3 THE COURT: Let's see what we have toward the end of  
4 that week.

5 THE DEPUTY CLERK: March 28th at 10:00 a.m.

6 THE COURT: Okay. We probably need a few hours.

7 THE DEPUTY CLERK: Oh, a few hours.

8 THE COURT: Yes. This is going to be an evidentiary  
9 hearing, so we will need a few hours.

10 (Pause)

11 MS. MARTIN: I was just -- Ms. Comey is out next week,  
12 so she asked if we could do it sometime in April so she has  
13 sufficient time to prepare.

14 THE COURT: How about April 3rd? April 3rd at 9:30.  
15 All right.

16 MS. MARTIN: Your Honor, also just -- we will get the  
17 transcript from this hearing, but just -- from this preceding,  
18 but I just want to make sure I understand so I can relay it  
19 accurately to Ms. Comey that the purpose of the hearing would be  
20 I guess two-fold: One, whether he distributed or continued to  
21 sell after his March 2015 arrest, or 2015 -- I think it was  
22 March 2015 arrest, and then also I think if the son was born in  
23 January of 2017, if he continues to engage in the conduct after  
24 that date. Is that fair?

25 THE COURT: Correct. Because it would -- one of the



1 aggravating factors here is that the defendant was arrested with  
2 183 bags in March 2015, and if he continued to sell heroin, that  
3 would be an aggravating factor. If he stopped, that would be to  
4 his credit.

5           Second, if the defendant stopped when his son was  
6 born, which was several months before his arrest, that would  
7 also be to his credit; but if he didn't, and he was untruthful  
8 with me just now, that would be to his detriment.

9           So yes, those are the two factual issues, and, you  
10 know, look, if the government says it can prove that the  
11 defendant was selling after January 2017, and if it can, that  
12 will answer both questions.

13           MS. MARTIN: Right.

14           THE COURT: And it may be that the government -- I  
15 don't know when the wire on Mr. Fennell went up. I don't know  
16 what the witnesses will say, but if the government doesn't have  
17 any evidence of the window between March 2015 and before the  
18 wire went up, so be it. If they can prove what they say they  
19 can prove, then, you know, we know that the defendant was  
20 intercepted in March 2015 -- 2017. If that is the timeframe of  
21 most of the conversations, obviously, that is after  
22 January 2017, and, you know, I didn't write down word for word  
23 what Mr. Adams said to me today, but he said that there is a  
24 conversation after the one where Mr. Adams agrees to cover  
25 Mr. Fennell's clients while he is away where he calls back and

1 says, no, I am not doing that.

2           And he said that he changed his life completely  
3 because he had a son, and I think he said he was no longer doing  
4 that kind of thing.

5           So I will, obviously, have to look at exactly what he  
6 said to see if the evidence at the hearing contradicts it, but  
7 even if it doesn't, in other words, even if the defendant didn't  
8 say anything dishonest just now, I still want to know whether or  
9 not he stopped selling after his March 2015 arrest because that  
10 is an aggravating factor, and since, as we all acknowledge,  
11 there are significant mitigating factors here, you know, I want  
12 to -- I want to be able to weigh the relative weight I should  
13 give to each set of the factors.

14           So I think when Mr. Adams pleaded, Mr. Henry convinced  
15 me to leave him out pending sentencing, and I reluctantly said  
16 okay, but told Mr. Adams to be prepared to go in at sentencing.  
17 I will let him stay out and keep working pending the hearing on  
18 April 3rd, but depending on how that goes, he ought to be  
19 prepared to go in that day. I'm not saying he will. I'm just  
20 saying he ought to be prepared. All right. I will see you  
21 folks April 3rd.

22           MR. HENRY: Thank you, Your Honor.

23           MS. MARTIN: Thank you, Your Honor.

24           (Time noted: 10:14 a.m.)

25